IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 689 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REMON GLUSE AND CHEMICALS

Versus

GULAMNABI MOHMMEDSSHA DIWAN

Appearance:

1. Special Civil Application No. 689 of 1992

MR BV LAKHIA for Petitioner

MR PC MASTER for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/12/2002

ORAL JUDGEMENT

By filing instant petition under Article 227 of the Constitution, the petitioner has prayed to set aside

Award dated October 8, 1991, rendered by the Labour Court, Nadiad, in Reference (LCN) No. 632/83, by which the petitioner is directed to reinstate the respondent in service with 20% back wages.

2. The Court has heard Mr.B.V.Lakhia,learned advocate for the petitioner and Mr.P.C.Master, learned counsel for the respondent, and considered the documents forming part of the petition.

3. The record of the case would indicate that before striking off the name of the respondent from muster-roll, no opportunity of hearing was accorded to him. This finding is recorded by the Labour Court on appreciation of evidence which is quite evident from Para-9 of the Award. The petitioner could not produce reliable and cogent evidence to establish that before striking off the name of the respondent from muster-roll, the provisions of the Industrial Disputes Act,1947 were complied with. In H.D.Singh v. Reserve Bank of India and others, AIR 1986 SC 132, the Supreme Court has ruled that striking off name of workmen from rolls amounts to retrenchment and procedure laid down in the Industrial Disputes Act has got to be followed. Under the circumstances, the Labour Court was justified in directing the petitioner to reinstate the respondent in service. So far as the question of back wages is concerned, the Labour Court has noted that in spite of receipt of letter Exh.21 asking him to report for duty, the respondent had not reported for duty and, therefore, was entitled to only 20% back wages and not to full back wages. It cannot be said that the Labour Court has exercised discretion arbitrarily in awarding 20% back wages to the respondent so as to warrant interference of the High Court in instant petition, which is filed under Article 227 of the Constitution. The petitioner has failed to make out any case for granting relief claimed in Para-7(B) of the petition and, therefore, the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. Ad-interim relief granted earlier is hereby vacated. There shall be no order as to costs.

(J.M.Panchal,J.)

(patel)